



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

On April 28, 2017, the Tenants applied for dispute resolution seeking an order that the Landlord comply with the Act, regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. Neither party submitted any documentary evidence. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Landlord confirmed the correct legal name of the Landlord. The Tenant did not object to the Application to being amended to reflect the correct legal name. Accordingly, pursuant to section 64 of the Act, I amend the Tenants' Application to reflect the correct legal name of the Landlord.

Issues to be Decided

- Is the Landlord ensuring that the Tenants' entitlement to quiet enjoyment is protected?

Background and Evidence

The parties testified that the tenancy commenced on March 20, 2015. The tenancy is a fixed term that continues until June 30, 2017. The Tenants pay monthly rent of \$775.00 on or before the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$375.00.

The Tenants submitted that they were disturbed by noise from other occupants of the building ever since they moved in. The Tenants submitted that they phoned the Landlord and reported the disturbances and put the complaints into writing. The Tenants did not provide copies of any letters, or any other documentary evidence.

The Tenants submitted that the noise is coming from the unit above them. They testified that there have been different occupants renting the unit above and that the occupants have all disturbed them with noise.

The Tenants submitted that the Landlord told them that she would take care of the complaints but nothing was done.

The Tenants submitted that they intended to apply for dispute resolution at an earlier time; however, they did not because the Landlord said she would deal with the problem.

In response, the Landlord, L.F. testified that there have been challenges with the occupants who have lived above the Tenants. She testified that the rental unit is owned by someone else and is not under her management.

The Landlord testified that there have been four different tenancies for the rental unit above the Tenants. She testified that she reported the complaints she received to the strata committee, and that written warnings were issued to the occupants; fines were levied; and all occupants were eventually evicted.

The Landlord testified that she personally solicited written complaints from the occupants surrounding unit #16, and nobody has responded to her with any written complaints.

Analysis

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;

- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

I accept the Landlords' affirmed testimony that the occupants living above the Tenants, were warned; fined; and evicted. The Landlords' testimony that there have been four tenancies in the unit above the Tenants is consistent with the Tenants submission that there have been multiple different parties living in the unit above them.

I find that the Landlord took reasonable steps to correct the situations where occupants who were not under her management, disturbed the Tenants.

I do not find that the Landlord has breached the Tenants' right to quiet enjoyment under section 28 of the Act, by failing to take reasonable steps to correct the problem.

The Tenants' application is dismissed.

Conclusion

I find that the Landlord received complaints from the Tenants about noise from another occupant in the property and took appropriate action to deal with the complaints by reporting the issue to the buildings strata council.

I do not find that the Landlord has breached the Tenants right to quiet enjoyment under section 28 of the Act, by failing to take reasonable steps to correct the problem.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 09, 2017

Residential Tenancy Branch